Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/00130/2020
(PA/50701/2020)

THE IMMIGRATION ACTS

Heard at Manchester CJC (via Microsoft Teams)	**Decision & Reasons Promulgated**
On 11 November 2021	**On 29 November 2021**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

TA
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Gilbert instructed by Londonium Solicitors
For the Respondent: Mr Tan, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Alis ('the Judge') promulgated following a hearing at Manchester on 12 February 2021 in which the Judge dismissed the appellant's appeal on all grounds.

Background

2. The appellant is a citizen of Bangladesh born on 6 January 1987 who entered the United Kingdom illegally in 2007/2008 but who did not claim asylum until 11 September 2018.

3. The Judge records at [6] of the decision under challenge:

> 6. The parties agreed that the issues to be determined were:
>
> i. Was the appellant at risk in Bangladesh on the basis of his political opinion?
> ii. If yes, was there sufficiency of protection or was internal relocation an option?
> iii. Would the appellant have come to the attention of the authorities through his sur place activities?
> iv. Would removal involve a disproportionate breach of his family/private life?

4. The Judge records it being conceded by the appellant's representative that the appellant was no longer with his girlfriend and his private life claim would only be based on his private life with his family in the UK.

5. Having considered the documentary and oral evidence the Judge sets out his findings from [62] of the decision under challenge which can be summarised in the following terms:

a. It is not disputed that on 29 October 1999, when the appellant was 12 years of age, his brother was killed following a running battle between two opposing student groups. There had been demands for the arrest and trial of those involved. In July 2004 the person accused of killing the appellant's brother absconded but was detained in March 2005. Those court proceedings were commenced on 29 October 1999 by the appellant's uncle and other brother [63].
b. The appellant's claim to have been involved in BNP politics in Bangladesh was only mentioned for the first time when his representative filed further submissions rather than when interviewed by an Immigration Officer after claiming asylum; which undermines the claim he was politically active. None of the documents submitted corroborate the claimed involvement with the BNP in either the UK or Bangladesh [64].
c. The appellant's claim his sister in the UK had no idea he was in this country was found to lack credibility as there was no reason for her not to have been told the appellant was coming. The Judge finds it lacked credibility the appellant would only contact his sister and ask her to collect him from Heathrow Airport as she lived at least 200 miles away in Oldham [66].
d. The appellant claims he came to the UK to claim asylum but did not claim asylum when he arrived [67].
e. The appellant's evidence concerning his claim not to have been employed is inconsistent with claims he worked in Warrington, Tameside, and Wigan. The Judge found the appellant's oral

evidence regarding employment in the UK inconsistent with his written evidence and found the account to lack credibility [67].

f. The appellant's evidence was that the trigger for his claiming asylum was an email sent by his brother claiming that those associated with the person accused of the murder has come to the family home on 27 July 2018 looking for the appellant and the other brother (who are both in the UK) telling the brother in Bangladesh to withdraw the murder claim or they would "murder them all". The Judge notes despite this alleged threat the brother continued to spend periods of time at the home address as did his wife, sister, and mother [69].
g. There was no information about the appellant's brother reporting the threats to the police and raising a First Incidence Report (FIR). Documents which are said to have been signed by the appellant's uncle another brother and the subsequent FIR are both unsigned which undermines the weight to be attached to the claim that his family were behind any proceedings involving the accused [70].
h. The appellant failed to provide evidence to support his claim. The documents provided by the appellant lacked authenticity which undermines his claim. There is country evidence showing the prevalence of forged documents which could not be overlooked [72].
i. Section 8 of the 2004 Act is relevant as the appellant failed to claim asylum for 12 years [73].
j. The appellant claims a fear of the ruling Awami League but nevertheless attended the Consular to obtain a passport. The Judge finds it lacks credibility he would have gone to the Consular for an ID document indicating he never intended to claim asylum [74].
k. The appellant's other brother in the UK has never claimed asylum. The Judge finds the appellant's motive for claiming asylum after 12 years lie in the answer given in his oral evidence and in his interview namely that his sister in Oldham could no longer afford to support him. The Judge finds the failure to claim asylum at the earliest opportunity is a factor which affects his overall credibility [75].
l. At [76], to the lower standard of proof, that (i) the appellant personally was not involved in political activity in Bangladesh, (ii) has not been politically active in the UK, (iii) that his brother has not been in hiding or on the move as claimed, and (iv) that the appellant will not face any problems on return.
m. The Judge finds the asylum claim has been made to try and extend the appellant's unlawful stay in the UK [77].
n. The appellant has not discharged the burden of proof upon him to show he would face persecution if returned Bangladesh [78].
o. No claim was made concerning entitlement to Humanitarian protection [79].

p. There are no substantial grounds for believing the appellant's removal would result in a breach of ECHR [80 – 82].

6. The appellant sought permission to appeal which was initially refused by a judge of the First-tier Tribunal but granted on a renewed application by the Upper Tribunal; the operative part of the grant being in the following terms:

1. The appellant claimed that he was in fear of return to Bangladesh due to his political activity before his departure for the UK in 2007. Court proceedings also played a part in his claim. He asserted, firstly, that he was the subject of intimidation to prevent his family prosecuting a long-standing case which resulted from the politically motivated murder of his brother in 1999. Secondly, the appellant also claimed that he was himself the subject of a false murder charge which dated back to 2013 (at which point he had been in the UK for a number of years).
2. The first of those claims was fully documented in the appellant's main hearing bundle, which was uploaded to CCD on 15 January. In his statement for the hearing, the appellant stated that he was urgently trying to get documents relating to the false murder charge against him. In the event, that evidence was only produced two days before the hearing, when a supplementary bundle was uploaded to the system containing a raft of evidence said to relate to the false charge, No 74/13. Despite the judge making reference to that evidence, at [33] of his decision, it is arguable that he failed to take into account in reaching the findings he reached.
3. In the event that the decision of the FtT is set aside, it might ultimately assist the Tribunal if some thought is given to authenticating the documents which bear a wet ink stamp from the 'Copping [sic] Department' of the District and Sessions Court in Sylhet.

Error of law

7. On behalf of the appellant Mr Gilbert submitted there were two central issues demonstrating the decision is flawed, being the Judges failure to analyse and consider the claim that the appellant had been targeted for prosecution for political reasons and coming to the ultimate conclusion found by the Judge, and a failure to properly consider all the documentary evidence provided. It is said the Judges finding that the FIR in the bundles was not signed is wrong as there are signed copies in the bundle that the Judge missed.

8. It is not disputed the Judge was required to consider all the evidence with the required degree of anxious scrutiny. Nor is it disputed that there was no requirement for the Judge to set out the evidence considered in full.

9. The Secretary of State has established a process for authenticating court documents from Bangladesh, but such system requires advanced notice of the documents being relied upon which was not available in this appeal where the documents appear to have been produced very late in the day. The Judge does not record any adjournment application being made by the Secretary of State's representative to authenticate documents and so the Judge was required to deal with the evidence that had been produced and admitted. Although Mr Gilbert suggested that the comment made in

the grant of permission at [3] was not a matter raised before the Judge and it was not a matter that can be raised now, the Judge was entitled to consider what weight could be given to the documents having considered the evidence in the round.

10. At [62] the Judge writes: *"I am required to look at the evidence in the round before reaching my findings. I have done so. Although, for convenience, I have compartmentalised my findings in some respects below, I must emphasise the findings have only been made having taken account of the evidence as a whole."* The criticism the Judge did not consider the additional evidence because it is not set out in the determination carries little weight. The question is whether having considered the evidence provided, and when the determination is read as a whole, there is any merit in the claim that the Judge has failed to consider a material aspect of the evidence with the required degree of anxious scrutiny. Failure to consider material relied upon by either party without good reason will amount to legal error giving rise to a need to question whether such error is material.

11. The Judge clearly understood the core of the appellant's case and there is no challenge to the finding at [63] in which the Judge sets out the basis on which the appellant claims to be entitled to a grant of international protection. I find the appellant fails to establish any misunderstanding in the mind of the Judge of the case the appellant was seeking to rely upon.

12. At [64] for Judge writes "*The appellant now claimed he had been involved in BNP politics in Bangladesh but when he was interviewed by the Immigration Officials, after claiming asylum, he made no mention of this. The first time it was mentioned was when his representatives filed further submissions. The fact he never mentioned his activities undermined his claim he was politically active. He went on to claim that since 2010 he had attended BNP meetings in this country and he stated in his oral evidence that he had pictures of him attending meetings and demonstrations. None of the documents submitted corroborated his claimed involvement with the BNP either here or in Bangladesh".* That is a sustainable unchallenged finding and one in accordance with the evidence.

13. The Judge also carefully analysed the appellant's immigration history which included the failure of the appellant to claim asylum for 12 years despite claiming that the reason he came to the United Kingdom was to make such a claim. The Judge's observation at [69] that despite the appellant claiming the trigger for his now making his claim was the visit to the family home on 27 July 2018 his brother continued to spend periods of time at the home address at did his wife's sister and mother which undermined the credibility of the claim of a credible potential risk of harm to members of this family unit, is a finding within the range of those reasonably available to the Judge on the evidence. The finding clearly indicates that a person "on the ground" in Bangladesh remained at the place where the alleged threat was made with no evidence of harm having occurred to them when the appellant, who was safely in the UK, claims otherwise. The Judge was

entitled to note that although the appellant had finally made a claim after 12 years in the UK his the brother in the UK had not and the evidence suggested the motive for the claim was not a desire or need for international protection but to try and regularise his stay as a result of his sister being unable to support him any further. No legal error is made out in the Judge's conclusions.

14. At [72] the Judge does not commit the impermissible mistake of seeking corroboration before a claim is believed but makes a factual statement that the appellant had failed to provide evidence in support of his claim; especially in relation to documents which the Judge finds would have been reasonably available. The comment by the Judge by reference to country evidence showing a prevalence of forged documents in Bangladesh is not evidence of the Judge dismissing the documentary evidence for this reason alone, but a judicial observation of a fact which is known and properly recorded in the country material. In this appeal, for example, the appellant claims that he is at risk as a result of charges being laid against him in Bangladesh alleging an assault resulting in grievous bodily harm and leading to the death of an individual concerned on the 12 September 2013 in Bangladesh which is physically impossible because the appellant has been in United Kingdom since 2007. Even if a false charge, the appellant failed to persuade the Judge they are genuine giving rise to a real risk.

15. The criticism of the Judge finding documents had not been signed when it was claimed by Mr George they had been signed fails to take account of an important point identified by Mr Tan. This is that although the copy FIR contained in the original appeal bundle does bear a signature the FIR in the supplementary bundle is not signed. It is this document the appellant claims evidences the real risk he seeks to rely upon. The specific finding made by the Judge at [70] is as follows: *"There was no information about his brother reporting the threats to the police and raising an FIR. The documentation which is said to have been signed by his uncle and other and the subsequent FIR are both unsigned. The absence of signatures undermines the weight to be attached to the appellant's claim that his family were behind any proceedings against [Mr H]".* The fact the Judge correctly recorded that the FIR in the supplementary bundle was not signed undermines the claim made in the grounds, and referred to in the grant permission, that he had not consider this evidence properly, for this document is not signed.

16. The Judge's conclusion there was no link between the alleged claim and the brother reporting the matter to the police is a finding within the range of those available to the Judge.

17. Mr Tan accepted the original FIR was signed but submitted the error was not material as that related to a historic document rather than the one that the appellant claimed supported the claimed risk to him now. Mr Gilbert submitted the error is material as the Judge made a mistake of fact in relation to the lack of a signature.

18. In E and R [2004] EWCA Civ 49 the Court of Appeal said that "a mistake of fact giving rise to unfairness is a separate head of challenge in an appeal on a point of law, at least in those statutory contexts where the parties share an interest in co-operating to achieve the correct result. Asylum law is undoubtedly such an area."

19. The Court of Appeal set out the ordinary requirements for a finding of unfairness as follows:

i) There must have been a mistake as to an existing fact including a mistake as to the availability of evidence on a particular fact;

ii) The fact or evidence must have been established, in the sense that it was uncontentious and objectively verifiable;

iii) The appellant (or his advisors) must not have been responsible for the mistake; and

iv) The mistake must have played a material (not necessarily decisive) part in the Adjudicator's reasoning.

20. As noted above, the Judge was clearly aware of the nature of the documents even if incorrectly recording one documents as having not been signed when it was. The mistake as to the existing fact, claiming the first historical FIR was not signed when in fact it was, was accepted by Mr Tan and is uncontentious. It is not suggested the appellant or his representatives are responsible for the mistake leaving the issue an assessment of whether the mistake played a material part in the Judge's reasoning. I do not find this has been shown to be the case. As noted the signed document relates to a past event. The FIR the appellant provided in support of his claim of an ongoing risk is not signed. The reasons the Judge gave for finding the appellant lacks credibility and had not established his case are substantially greater than any issues arising from the mistake of fact. I find the appellant has failed to establish the mistake did play a material part in the Judge's assessment individually or cumulatively with the rest of the evidence, such as to amount to unfairness in the decision-making process. If one takes out this element of the Judge's findings there still remain the core concerns of the Judge recorded in the determination which led to the dismissal of the appeal.

21. Having given careful consideration to this matter, having considered the available evidence, having read the determination as a whole, and having taken into account the submissions made by the advocates, I do not find it has been established the Judge failed to consider the evidence which required degree of anxious scrutiny. I do not find it made out the Judge did not understand the appellant's case in full. I do not find the Judge has applied an incorrect burden or standard of proof or that the decision demonstrates inappropriate or irrational weight being given to the evidence. The Judge makes clear findings which are adequately reasoned that enable a reader of the decision to understand why the Judge came to the conclusions that have been recorded. I do not find the appellant has established that those findings are outside the range of those reasonably available to the

Judge on the evidence. I do not find the appellant has established legal error material to the decision to dismiss the appeal and the conclusion of the Judge that the appellant had not established an entitlement to a grant of international protection or for leave to remain on human rights grounds. I do not find the appellant has established that the Judge's findings are outside the range of those reasonably available to the Judge on the evidence.

22. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

23. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed……
Upper Tribunal Judge Hanson

Dated 23 November 2021